

SB305

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Mr. Chairperson and Members of the Committee,

I am speaking in support of SB305. As a landowner and tax paying citizen of Montana, while attempting to subdivide property I own, I have personally experienced the impact of the inadequacies of the Subdivision and Platting Act as it is today.

One of the most common violations is the governing body's apparent disregard for meeting the time frames as set forth in the Subdivision and Platting Act. I once had a county planner tell me that he was not going to come close to meeting the time frame required by law and he finished by nonchalantly saying "...but what else is new?". He never gave me a reason why he wasn't going to meet the deadline.

The addition of the phrase, 'substantial credible evidence', in various sections is important because local government often utilizes trivial information as a means to delay the process of subdivision. Another reason to have this phrase included is because it makes the governing body provide actual proof to substantiate an action they may take. I was denied a variance request based on some of the Commissioner's belief that emergency services could not adequately serve an area even though testimony to the contrary was provided by experts of the emergency services in question. Without any other evidence having been submitted, the Commissioners stated that they believed the service was inadequate and proceeded to issue a denial.

Regarding the amendments involving capital improvements (76-3-510) I think it is important because county governments do not seem to want to abide by the Impact Fee legislation passed in 2005. This bill was created in a consensus atmosphere, including representatives of local government. Unfortunately, local governments continually demand extortion-like fees from subdividers for capital improvements, without having followed the protocol to establish those fees as described in the Impact Fee legislation.

The amendments in Sections 8 and 9 (76-3-620 and 76-3-625) make sense because it makes a governing body give the landowner a statement in writing as to why the governing body took the action it did. If a landowner is denied the right to subdivide their land, and they are going to appeal the decision, the governing body should have to substantiate their position. Then, the landowner has a clear picture as to the reason for denial or conditional approval and can proceed with an appeal or action that addresses the governing body's issues.

Opponents of this bill may say that the governing body cannot meet the time frames. I believe that with good management of competent employees, it can be done. People may be concerned that an inadequate project may be able to move ahead simply because of these amendments. Most projects are so complete when they are turned in for review, in most cases, a threat to public health and safety would not be present. People may say that this bill was created without consensus. Consensus wouldn't be needed if local governments didn't continually abuse the Subdivision and Platting Act.

The subdivision process is no small undertaking, it is a large emotional and financial endeavor. The amendments as proposed in SB 305 go a long ways towards fixing a process that can be described as broken. Too often, landowners are pitted against the governing body in an "us against them" situation. This is ridiculous. The amendments bring some accountability to the governing side of this process.

Most people subdividing their land strictly abide by all of the laws regarding subdivision of land. They hire professional consultants at considerable expense and meet the demands of a myriad of government agencies. As it is now, the citizen pays the salaries of these governing bodies, but has little or no recourse when they encounter a rogue local government. Unfortunately, it appears to have become common practice in many local governments to disregard the rule of law and the fundamental rights of the citizens. It seems we practice regulation through litigation, rather than legislation because local governments are not following the laws that you, the Legislature, have enacted.

The approval of SB305 will return the subdivision process to balance and I recommend a "due pass".